United States Department of Labor
Employees' Compensation Appeals Board

GARY M. DeLEO, Appellant	)	
and	)	**Docket No. 05-1099**
	)	**Issued: August 8, 2005**
DEPARTMENT OF THE NAVY, NAVAL AIR STATION, JOINT RESERVE BASE, New Orleans, LA, Employer	)	

Appearances:
Gary M. DeLeo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 18, 2005 appellant filed a timely appeal of the April 14, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

[1] The record on appeal includes evidence submitted after the Office issued the April 14, 2005 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

On May 28, 2004 appellant, a 52-year-old supply clerk, filed an occupational disease claim for "faint ill feeling [and] dizziness." He identified April 26, 2004 as the date he first realized his condition was employment related. Appellant explained that he started working with computers for the first time on April 19, 2004 and since he began his present assignment he experienced a faint ill feeling and dizziness.

In an attached statement, appellant indicated that the first episode occurred April 26, 2004, at which point he informed his supervisor of his difficulties. The supervisor reportedly advised him to take frequent breaks from looking at the computer screen. Appellant saw his ophthalmologist on April 30, 2004 and he received a prescription for new eye glasses. Despite new glasses and taking frequent breaks, he continued to feel faint and dizzy while working on the computer. Appellant visited his primary care physician on May 19, 2004, who recommended a return visit to the ophthalmologist. His second visit to the ophthalmologist on May 21, 2004 resulted in a stronger eye glass prescription. This, however, did not resolve the problem as appellant continued to experience the same symptoms when he returned to work on May 25, 2004. The next day his primary care physician recommended a repeat visit to the ophthalmologist. This time appellant chose a different eye doctor, who prescribed bi-focal glasses on May 26, 2004.

Appellant explained that he also suffered from diabetes and his internist suggested that he see a neurologist if the bifocal glasses did not solve the problem. He began wearing bifocal glasses at work on June 14, 2004; however, the new glasses did not resolve the problem. Appellant's primary care physician referred him to a neurologist, who he saw on July 12, 2004. He underwent an electroencephalographic (EEG) study on July 13, 2004 and had a follow-up visit with the neurologist on July 19, 2004.

Appellant submitted April 30 and May 27, 2004 treatment notes from Dr. Suzette S. Killeen, a Board-certified ophthalmologist. The notes reflect his complaints of dizziness, headaches and blurred vision when looking at computers. A May 28, 2004 report from Dr. Killeen noted a diagnosis of diabetes mellitus. She explained that appellant was referred for an eye examination to determine whether he had diabetic retinopathy. Dr. Killeen's examination revealed no evidence of diabetic retinopathy and she noted that appellant's refractive error was correctable with spectacles. He also provided a July 7, 2004 neurology referral from Dr. Tilak K. Mallik, a Board-certified internist, who noted a history of Type 2 diabetes mellitus and complaints of dizziness after looking at a computer screen for a long time. Additionally, appellant submitted a July 12, 2004 referral for an EEG from Dr. Walter D. Truax, a Board-certified neurologist. The July 13, 2004 EEG results were interpreted as normal.

On August 12, 2004 the Office requested additional medical evidence from appellant. Although the Office advised him that he had approximately 30 days to respond to the August 12, 2004 request, the Office issued a decision denying the claim on September 9, 2004.

Under cover letter dated September 11, 2004, appellant submitted a July 12, 2004 report from Dr. Truax and an August 31, 2004 report from Dr. Killeen. Dr. Truax indicated that he saw appellant on July 12, 2004 for complaints of dizziness after working on computers. Appellant

reportedly felt faint and lightheaded when he stood up after working on the computer for 10 to 15 minutes. There was some concern that it might be related to his diabetes; however, there was no recent evidence of hypoglycemia. Dr. Truax also noted that appellant recently received three different eye glass prescriptions from two ophthalmologists, but none of the prescriptions improved his symptoms. He also noted that he had not worked on the computer for two to three weeks and he has had no problems recently. Dr. Truax indicated that he was uncertain as to what was causing appellant's symptoms. He surmised that it could be an epileptic phenomenon associated with the computer screen, but expressed doubt that this was the cause. Dr. Truax also noted that he suggested appellant get an EEG and follow-up with him when the study was completed.

Dr. Killeen indicated that she saw appellant on April 30 and May 27, 2004 for complaints of blurred vision and headaches when looking at the computer. She noted a history on insulin-dependent diabetes and no evidence of diabetic retinopathy. When Dr. Killeen first examined appellant on April 30, 2004 his visual acuity with his then current eye glass prescription was 20/70. She was able to improve his visual acuity to 20/25 with a new prescription. Appellant's visual acuity remained the same on May 27, 2004 when he returned with ongoing complaints of headaches and dizziness. Dr. Killeen's impression was that he was having some difficulties with his computer. She noted that appellant had a refractive error that required glasses for any distance and near work. Dr. Killeen indicated that it was possible he was having a difficult time adjusting to the presbyopia and the need for near vision and intermediate vision while working on the computer. She further noted that she did not find anything medically, pathologically wrong with appellant to prevent him from working on a computer. Dr. Killeen suggested that he might need an adjustment period. From an ophthalmic standpoint, appellant's eye examination was within normal limits for his age. Dr. Killeen advised him that the dizziness and headaches were not of ocular origin and if it persisted he should follow-up with his primary care physician or neurologist.

On September 20, 2004 appellant wrote to the Office requesting that it void the September 9, 2004 decision because he had timely complied with the Office's August 12, 2004 request for additional medical evidence. The Office treated his September 20, 2004 correspondence as a request for reconsideration.

In a decision dated October 14, 2004, the Office noted that it mistakenly issued the September 9, 2004 decision prior to the expiration of the 30-day deadline set forth in the August 12, 2004 information request. The Office, therefore, reviewed the merits of the claim, including the recently submitted reports from Dr. Killen and Dr. Truax. While the Office accepted that appellant experienced the reported symptoms while using his computer at work, the medical evidence was deemed insufficient to establish a causal relationship between his condition and his employment. Consequently, the Office denied his occupational disease claim.

On January 10, 2005 appellant requested reconsideration. In a December 20, 2004 report, his internist, Dr. Mallik, noted that, when he saw appellant on June 4, 2004, he complained of dizziness, particularly if he worked with a computer for a long time. Otherwise, there were no specific complaints related to appellant's dizziness. He also noted that appellant received a neurological evaluation in July 2004 for similar complaints. Dr. Mallik indicated that he had treated him for his diabetes since November 2002 and explained that diabetes-related

hypoglycemia can sometimes cause dizziness. But in appellant's case, there was no documentation at the time that could justify a recurrent hypoglycemia.

By decision dated April 14, 2005, the Office denied modification of the October 14, 2004 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[3]

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4]

ANALYSIS

Appellant first experienced a "faint ill feeling [and] dizziness" on April 26, 2004 after working on his computer. An employing establishment supervisor confirmed that he reported this incident to his supervisor on April 26, 2004 and that he was advised to take frequent breaks. While the record supports appellant's claimed employment exposure, there is no medical evidence diagnosing an employment-related condition. He was seen by a number of physicians regarding his complaints of blurred vision, dizziness and headaches, but his internist, neurologist and his ophthalmologist were all unable to provide a specific employment-related diagnosis. Dr. Truax was uncertain about the cause of appellant's symptoms and Dr. Mallik and Dr. Killeen respectively ruled out his diabetes and his refractive eye condition as the source of his complaints. But none of the three physicians was able to specifically attribute appellant's symptoms to an alternative source, including his employment duties.

[2] 5 U.S.C. § 8101 *et seq.*

[3] 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[4] *Victor J. Woodhams*, *supra* note 3.

Although work activities may produce pain or discomfort revelatory of an underlying condition, this does not raise an inference of causal relationship.[5] Furthermore, the fact that the etiology of a disease or condition is unknown or obscure does not relieve appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor does it shift the burden of proof to the Office to disprove an employment relationship.[6] The medical evidence provided by Dr. Killeen, Dr. Truax and Dr. Mallik does not demonstrate the presence of an employment-related condition and, therefore, the office properly denied appellant's occupational disease claim.[7]

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[5] *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

[6] *Judith J. Montage*, 48 ECAB 292, 294-295 (1997).

[7] *Victor J. Woodhams*, *supra* note 3.